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OFFICE OF PETITIONS

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|---------------------------------|---|-----------------------|
| In re Application of | : | |
| Karl E. Stahlkopf | : | |
| Application No. 10/687,795 | : | DECISION ON PETITION |
| Filed: October 17, 2003 | : | UNDER 37 CFR 1.137(b) |
| Attorney Docket No. HECO-KES-P1 | : | |

This is a decision on the petition, filed July 2, 2004, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. See 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen months publication country on December 18, 2003.¹ However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen months publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

¹ It is noted that the Rescission of Previous Nonpublication Request listed the PCT Application US03/41385 filing date on December 18, 2004, when in fact the correct date is December 18, 2003.

A petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

- (1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
- (2) the petition fee as set forth in 37 CFR 1.17(m); and
- (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded.

A Notice of Allowability and a Notice of Allowance and Fee (s) Due were mailed in this case on May 24, 2004. However, in view of the nonpublication request filed with the application, the Notice of Allowance and Fee (s) Due mailed in this case did not require the submission of a publication fee. Therefore, in view of the rescinding of the nonpublication request and in view of the presence of an authorization to charge any additional fee due located in the file, the \$300 publication fee will be charged to petitioner's deposit account. If publication of the application does not occur, applicant may file a request for a refund after the patent issues.

Any inquiries concerning this decision may be directed to Retta Williams at (571) 272-3229.

This application matter is being referred to the Publishing Division.



Frances Hicks

Petitions Examiner

Office of Petitions

Office of the Deputy Commissioner
for Patent Examination Policy